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LEGISLATION OF 1922 OF SPECIAL INTEREST TO LAWYERS.*

Beginning with the Code of 1919 and continuing through the session of the General Assembly which adjourned on the twentieth day of March of this year, so many radical changes have been made in the statutes relating to the distribution of the personal estate of intestates, the renunciation of wills by surviving husbands or wives, the descent of real estate, and the curtesy rights of husbands and the dower rights of wives, that I am constrained, at the outset, to point out these changes. Subsequently, I shall take up other matters.

Prior to the taking effect of the Code of 1919 on January 13, 1920, the distribution of personal estate of husband or wife dying intestate was governed by Sec. 2557 of the Code of 1887, which enacted that if the intestate was a married woman her husband should be her sole distributee, but that if the intestate was a married man, his widow should be entitled to only one-third of his personal estate, if there was issue of that or of a former marriage surviving, or if no such issue, to only one-half. Nevertheless, while the Code of 1887 did not put husband and wife on terms of equality as to personal estate in case of intestacy, yet in case the husband died testate, it contained a section [1] giving the widow the absolute right to renounce any provision made for her in his will, and if such renunciation was made, or if no provision whatever was made for her in the will, the statute gave her such share of her husband's personal estate as she would have had if he had died intestate. There was no corresponding statute assuring to the husband any part of the wife's personal estate, and she had the right to deprive him of all of it by will. The Code

*An address before a joint meeting of the Legal Club and Bar Association of Lynchburg, May 2, 1922, by C. H. Morrissett, Director of the State Legislative Reference Bureau.

1. Code 1887, Sec. 2559.

of 1919 put husband and wife on terms of equality in case of intestacy by providing that "If the intestate was married, the surviving husband or wife shall be entitled to one-third of such surplus,[2] if the intestate left surviving issue of the marriage which was dissolved by the death of the intestate, or of a former marriage; but if no such issue survive, the surviving husband or wife shall be entitled to the whole of such surplus." [3] But the Code made no change in the section above referred to relating to renunciation of wills so as to give the husband a similar right, and under the Code the wife was guaranteed the whole of the husband's personalty if he left no issue surviving, or one-third, if there was issue surviving, and he could not deprive her of any part thereof by will without her consent. In order to remedy this situation, the General Assembly in 1920 passed an emergency act, effective February 21, 1920. This act made Sec. 5276 of the Code read as follows:

"When any provision for *a husband or* a wife is made in *the consort's* will, *the survivor* may, within one year from the time of the admission of the will to probate, renounce such provision. Such renunciation shall be made either in person before the court in which the will is recorded, or by writing recorded in such court, or the clerk's office thereof, upon such acknowledgment or proof as would authorize a writing to be admitted to record under chapter two hundred and eleven. If such renunciation be made, or if no provision for the *surviving husband or wife* be made in the will *of the decedent, the surviving consort shall, if the decedent left surviving issue of the marriage which was dissolved by the death of the consort or surviving issue of a former marriage, have one-third of the surplus of the decedent's personal estate mentioned in section fifty-two hundred and seventy-three; or if no such issue survive, the surviving consort shall have one-half of the aforesaid surplus;* otherwise, the *surviving consort* shall

2. "Surplus" means what is left of the personal estate after the payment of debts, charges of administration, etc.

3. Code, Sec. 5273. The revisors of the Code enlarged Sec. 5277 so as to bar the right of a husband to share in the distribution of his wife's personal property in case he leaves her and lives in adultery, unless before the death of the wife they were reconciled and lived together. Before the revision the section was restricted in its application to an erring wife.

have no more of the said surplus than is given *him or* her by the will." [4]

It is seen, therefore, that in case of testacy, the law now in force gives the husband the same right to renounce the wife's will that she has to renounce his, and that in case such renunciation be made, or in case no provision be made in the will of the decedent for the surviving consort, the same proportion is assured the survivor whether the survivor happens to be the husband or the wife.

Sec. 5276 of the Code, previously quoted, relating to the renunciation of wills by surviving husbands or wives, deals with personal estate only.[5] It was again amended in 1922 by an emergency act effective March 28, 1922.[6] This amendment, while manifestly intended to cover a particular case, is important, and will apply to future cases. It makes the section as above quoted subject to the following provisos:

"Provided, however, that if any such will is of a doubtful import as to the amount or value of the property the husband or wife of such consort is to receive thereby or thereunder and a suit in equity is pending wherein the said will will be construed in such respect, the court in which said suit is pending shall, within said year, on the application of such surviving husband or wife, if he or she as the case may be so desire, enter an order extending the time within which such survivor is to make such renunciation for such additional period beyond such year as will allow said survivor a reasonable time, not exceeding six months, for making such renunciation after a final order shall have been entered in said suit construing such will in such respect, either by a trial court or any appellate court to which it may be appealed; and provided further, that such survivor may, within said year, have the right to institute and maintain any such suit for the proper construction of said will in such respect."

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4. Acts 1920, p. 59. If husband or wife die intestate, this act does not apply, but Sec. 5273 of the Code governs. It should be noted that if no issue survive, under Sec. 5273 of the Code (intestacy) the surviving consort gets the whole of the personal estate, while under Acts 1920, p. 59 amending Sec. 5276 of the Code (testacy) the surviving consort can get only one-half. If there is issue, either party may, by will, deprive the other of two-thirds, but if no issue, of only one-half.

5. See first paragraph of Code annotations.

6. Acts 1922, H. B. 362.

Sec. 5121 of the Code regulates the election of a widow to waive jointure and demand dower. This section was also amended by an emergency act which was approved on the same day as the other act just mentioned, and the amendment is the same, *mutatis mutandis.*[7]

The Code of 1919 made no change in our famous statute of descents. First enacted in October, 1785 to take effect January 1, 1787, the statute was mainly the work of Thomas Jefferson, and, as Professor Graves well says, "is regarded as a masterpiece of legislation." [8] Although modified in a few respects since its original enactment, not until the present year was any radical change made in it. By an act approved March 28, 1922, Sec. 5264 of the Code, which is on the subject of the course of descents generally, was radically amended.[9] Under the section now in force, if the decedent leave no children nor the descendants of any, his real estate of inheritance as to which he dies intestate, descends to his father, and if there be no father, then it descends in equal parts to his mother, brothers and sisters, and their descendants. The residue of the section carries out the same idea of giving preference to the ascending male line. The amendment seeks to remove throughout this preference. Hence, if the decedent leave no child, nor the descendant of any child, his real estate will go, not to his father alone, as at present, but to his father and mother equally, if both be living, or to the survivor, if one be dead. If there be no father or mother, then it descends in parcenary to his brothers and sisters and their descendants. But in addition to the elimination of the preference above referred to, the amendment raises the standing of a surviving husband or wife as heir of the other. Under existing law, neither is the heir of the other unless no other heir in the world exists, but under the amendment, if there be no children, no father or mother, no brother or sister, or no descendant of any such, then the whole of the estate goes to the surviving husband or wife of the intestate.

Sec. 5273 of the Code, which governs the distribution of personal estate, was not amended in terms by any act of 1922, but

7. Acts 1922, H. B. 364.
8. Graves' Notes on Real Property (New), p. 86.
9. Acts 1922, H. B. 75.

it should not be overlooked that it is provided by that section that "When any person shall die intestate as to his personal estate or any part thereof, the surplus * * * after payment of funeral expenses, charges of administration and debts, shall pass and be distributed to and among the same persons, and in the same proportions, to whom, and in which real estate is directed to descend," except as to the personal estate of infants and married persons. The personal estate of an *infant* is distributed as if he were an adult,[10] while the law with reference to married persons has already been stated.

Dower and curtesy are life estates created by operation of law. Under the law now in force, a widow is endowed of one-third of all the real estate whereof her husband, or any other to his use, was, at any time during the coverture, seized of an estate of inheritance, unless her right to such dower shall have been lawfully barred or relinquished.[11] In 1922 the section of the Code just referred to was amended so as to provide that if the husband die testate his widow shall be endowed of one-third, and if he die intestate *and* without issue of that or a former marriage, the widow shall be endowed of all such real estate of her husband.[12] Under this amendment, if the husband leave no will or issue, the widow will be entitled to a life estate in all of her deceased husband's real estate, provided the other requisites for dower exist; if he leave a will or issue the widow will be entitled to one-third for life, as at present. While the case of intestacy with issue is not expressly provided for, the necessary implication is that if the husband die intestate and with issue the widow will be endowed of one-third.

In 1922 a separate and independent act was passed on the subject of curtesy.[13] Without attempting to state all of the common law requisites for curtesy, it may be said that, unlike dower, one of such requisites for curtesy is that there must have been issue born alive of the marriage, otherwise the husband has no rights in his wife's real estate after her death unless of course he derives rights through the wife's will or perchance by opera-

10. As to descent of real estate from infants in certain cases, see Code, Sec. 5272.

11. Code, Sec. 5117.

12. Acts 1922, H. B. 73.

13. Acts 1922, H. B. 74.

tion of the statute of descents. But, popularly speaking, in order to equalize things, curtesy being contingent upon the birth of issue and dower not, curtesy, under the law now in force, is a life estate in the whole of the wife's realty, while dower is simply a life estate in one-third of the husband's realty. I say "popularly speaking" because every lawyer knows that dower and curtesy, and the differences between them, are relics of the feudal system of land tenure.[14] The new act seeks to give the husband the same curtesy rights in his wife's realty as she, under the amendment to Sec. 5117 of the Code has dower rights in his, and under the same corresponding conditions, that is to say, if the wife die testate, the surviving husband will be entitled to curtesy in one-third, "and if she die intestate and without issue, of this or of a former marriage, in all of the real estate, (except her equitable separate estate where the instrument creating the same otherwise provides) whereof his wife, or any other to her use, was at any time during the coverture seized of an estate of inheritance, unless his right to curtesy shall have been lawfully barred or relinquished." It is moreover expressly provided that it shall not be a requisite to curtesy that the wife shall have had a child born alive during the coverture, and further, that the mere fact that the husband conveyed or caused the real estate to be conveyed to the wife shall not bar his curtesy therein. As to

14. The learned Professor Graves, in his Notes on Real Property (New), Sec. 289, has the following gem:

"Let us see how the differences between curtesy and dower may be accounted for on principle.

"Curtesy, because of tenure, arose on the birth of issue; dower, because needed for support, whether there was issue or not. Curtesy was of all the wife's lands, because the husband had done homage for all; dower of one-third of the husband's as enough for the wife's maintenance. Curtesy, because of tenure, could only attach where the wife had actual seisin; dower, because of bounty, was allowed in lands of which the husband had only seisin in law. Curtesy vested without assignment, because the husband was already in possession; dower vested under the heir's assignment, as the widow must hold under him. Curtesy was not avoided by the husband's adultery because held of the lord in consideration of feudal services; dower was forfeited by the wife's elopement and adultery, which proved her unworthy of the husband's bounty. In a word, curtesy was a matter between the lord and his vassal, the husband; dower a matter between the husband and his wife."

curtesy in equitable separate estates, it should be noted that, while Section 5134 of the Code enacts that a husband shall be entitled to curtesy in the real estate of the wife "other than her equitable separate estate" when the common law requisites therefor exist, and that he shall not be deprived thereof by her sole act, the new act seems by necessary implication, if not expressly, to give the husband curtesy in equitable separate estates in all cases except where the instrument creating the estate otherwise provides.

The three acts above referred to relating to descents, dower and curtesy, respectively, were approved on March 28, 1922 and, like other acts passed at the late session of the General Assembly which contain no emergency clauses or other special provisions as to the time of their taking effect, will become effective on June 18, 1922, this date being the ninetieth day after the adjournment of the late session of the General Assembly.[15] June 18, 1922, is a Sunday, but I know of no authority for the proposition that this is material to the question as to when a legislative act will go into effect. Each of the acts relating to dower and curtesy speaks of the consort's dying "testate," or "intestate and without issue." Neither says anything about partial intestacy; but it is supposed that, in such case, *where there is no issue,* the rights of the surviving consort will be increased according to the extent of the intestacy, but not in such manner as to decrease the value of the part of the estate devised where such value is not more than two-thirds of the whole estate subject to dower or curtesy. In no event may a husband or wife deprive the other of dower or curtesy, as the case may be, in one-third without the consent of the other. "Issue," as used in the acts, manifestly means "lineal descendants."

Still another act on dower and curtesy was passed at the session of 1922.[16] This act is a very desirable one and provides "That the disability of infancy shall be, and the same is hereby declared to be removed by marriage for the purpose of, and to the extent, only, that hereafter an infant wife, whether married

15. Const., Sec. 53; Code, Sec. 4; State *v.* Mounts, 36 W. Va. 179, 14 S. E. 407; Sutherland, Stat. Const., Sec. 111. But see Halbert *v.* San Saba Springs, etc., Asso., 89 Tex. 230, 34 S. W. 639, which it is respectfully submitted is judicial legislation.

16. Acts 1922, H. B. 87.

before or after this act takes effect, may, in the manner prescribed by section fifty-one hundred and thirty-five, pass her contingent right of dower in her husband's real estate as effectually as if she were an adult; and an infant husband, whether married before or after this act takes effect, may in like manner, pass his contingent right of curtesy in his wife's real estate as effectually as if he were an adult."

No suit for annulling a marriage or for divorce is now maintainable, unless one of the parties has been *domiciled* in this State for at least one year preceding the commencement of the suit; nor is any suit for affirming a marriage now maintainable, unless one of the parties be *domiciled* in this State at the time of bringing such suit. These provisions are contained in Section 5105 of the Code. In 1922 this section was amended so as to require, in the first case, actual *bona fide* residence as well as domicile for the period stated; and, in the second case, actual *bona fide* residence and domicile.[17]

An important act with reference to persons and corporations doing business under assumed or fictitious names, and persons doing business as co-partners, was approved on March 23, 1922.[18] This act requires the signing, acknowledgment and filing of certificates giving certain information. The filing is to be done in the office of the clerk of the court in which deeds are recorded in the county or corporation wherein the business is being, or is to be, conducted. Provision is made for the recordation of the certificates. The fees of the clerk are prescribed. Every such corporation must also file in the office of the clerk of the State Corporation Commission a copy of the certificate duly attested by the clerk of the court in the office of whom the original is on file. Failure to comply with the act is made a misdemeanor.

By an act approved March 11, 1922 the clerk of the court upon admitting to record the deed of a trustee conveying property held in trust is required to note a reference to the same on the margin of the deed book where the deed or other writing conveying the property to such trustee in trust is recorded, if the

17. Acts 1922, H. B. 310. For an excellent discussion of the differences between residence and domicile, see opinion of Judge Prentis in Cooper's Admr. *v.* Com., 121 Va. 338, 93 S. E. 680.

18. Acts 1922, S. B. 120.

same can be found in his office.[19] This requirement, of course, is to facilitate the examination of titles.

By section 5189 of the Code of 1919 it was declared that "Every sale or contract for the sale of goods and chattels wherein the title thereto or lien thereon is reserved until the same be paid for, in whole or in part, or the transfer of title is made to depend on any condition where possession is delivered to the vendee, shall in respect to such reservation and condition, be void as to creditors of and purchasers for, value without notice from such vendee until such sale or contract be evidenced by writing signed by the vendor and the vendee, setting forth the date thereof, the amount due, when and how payable, a brief description of the goods and chattels, and the terms of the reservation or condition, and until and except from the time the writing evidencing such sale or contract is duly admitted to record in the county or corporation in which said goods or chattels may be, or in the clerk's office of the Chancery Court of the city of Richmond, if said goods and chattels be in that city, or," etc. Further in the section it was provided that "It shall be the duty of the clerk to record such writing in the book of miscellaneous liens and index it in the name of both the vendor and vendee, for which service he may charge a fee not exceeding *twenty-five cents,* but no tax shall be charged thereon." At the extra session of 1919 the Code section, although not then in force, was amended by an act to become effective simultaneously with the Code.[20] The purpose of the amendment was to prevent the principal change made in the section by the revisors from becoming operative. At the time of the revision, and for more than a score of years prior thereto, the writing itself was not required to be recorded but only a memorandum thereof, and the "principal change" referred to above was to require the recordation of the writing itself,[21] thus reverting to Sec. 2462 of the Code of 1887 before its amendment by Acts 1889-90, p. 108. As stated, the purpose of the amendment of 1919 was simply to prevent the change mentioned from becoming operative. It did not make any other change. In 1920 an attempt was made further to amend Sec. 5189 of the

19. Acts 1922, p. 364, amending Sec. 5167 of the Code.
20. Acts 1919, p. 40.
21. Revisors' note to Sec. 5189 of the Code.

Code,[22] but as the act of 1920 contained no enacting clause, it was void.[23] This being true, the law in force prior to the amendment of 1922, presently to be mentioned, was the amendment of 1919 above referred to, and the differences between that amendment and the attempted amendment of 1920 will not be stated here. The failure of the last named amendment presented at least one grave question: Where was the proper place for such memoranda to be recorded? The Code and the act of 1919 following it provided that they should be recorded in the book of miscellaneous liens, and such was the reading of Sec. 3393 of the Code on the subject of "Where writings, etc., to be recorded" before an act of 1920 amending the last named section.[24] The attempted amendment of 1920 of Sec. 5189 provided that the memoranda should be docketed in a book to be called the conditional sales book, and with the intention of making Sec. 3393 of the Code conform to this, that section was amended by excepting from the writings to be recorded in the miscellaneous lien book the writings mentioned in Sec. 5189, as amended. Treating as void the act of 1920 amending Sec. 5189, it would seem that the memoranda should have been recorded in the book of miscellaneous liens, as this was expressly required by the act of 1919, which was still in force after the attempted amendment of 1920, as we have seen; and although the act of 1920 amending Sec. 3393 excepted from the writings to be recorded in the miscellaneous lien book the writings mentioned in Sec. 5189, yet there was in that amendment a blanket provision that "all other liens not especially directed to be recorded elsewhere, shall be recorded in a book to be known as miscellaneous liens;" and it would seem that even if it should be held that the first part of the amended Sec. 3393, being a later act, neutralized the provision in the amended Sec. 5189, being a prior act, still the blanket provision above referred to would of itself have required the memoranda to be recorded in the book of miscellaneous liens.

This situation called for curative legislation at the session of 1922, for many clerks and lawyers had proceeded on the theory that the amendment of 1920 was a valid enactment. Accordingly,

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22. Acts 1920, p. 398.

23. Beale *v.* Pankey, 107 Va. 215, 57 S. E. 661. The enrolled act has been examined.

24. Acts 1920, p. 313.

by an emergency act approved on February 18, 1922 and effective from its passage, Section 5189 of the Code was again amended, this time with due respect to formal requirements.[25] All recordations and docketings made in conformity with the law as it existed before the Code of 1919 became effective on January 13, 1920, between the said January 13, 1920 and March 19, 1920, both inclusive, are validated by the act, except where the validity of such recording or docketing has been or could be attacked in litigation pending on February 18, 1922. The amendment further validates all recordations and docketings made in accordance with the language of the act of March 19, 1920 which contained no enacting clause. No vested rights, however, can be impaired by a validating statute,[26] and this fact is recognized by the wording of the amendment.

The residue of the act of 1922 is very much like the void act of 1920—not previous enactments. The memoranda must be docketed in the conditional sales book. The five-day provision is made to express what was intended by the inapt and ambiguous language of the act of 1920. This intention was that "if such filing for docketing be done within five days from the delivery of the goods and chattels to the vendee, it shall be as valid as to creditors and purchasers as if such filing for docketing had been done on the day of such delivery of the goods and chattels."

Under the law now in force every contract in writing made in respect to real estate or goods and chattels, in consideration of marriage, or made for the conveyance or sale of real estate, or a term therein of more than five years, and every deed conveying real estate or a term therein of more than five years, and every deed of gift, or deed of trust, or mortgage conveying real estate or goods and chattels, and every bill of sale, or contract for the sale of goods and chattels, where the possession is allowed to remain with the grantor, is "void as to subsequent purchasers for valuable consideration without notice and creditors, *whether general or by lien,* until and except from the time it is duly admitted to record and indexed as required by law, in the county or corporation wherein the property embraced in such contract, deed, or bill of sale may be." [27] The revisors of 1919

25. Acts 1922, p. 60.

26. Merchants' Bank *v.* Ballou, 98 Va. 112, 32 S. E. 481

27. Code, Secs. 5192-5194.

inserted the words "whether general or by lien," the intent being to extend the protection in express terms to general creditors as well as lien creditors, for it had been held in two cases that the word "creditors," as previously used in the section, meant lien creditors only.[28] Properly interpreted in the light of the two cases referred to, this change was unobjectionable, but it was feared that it was susceptible of an improper interpretation. The section was therefore amended in 1922 so as to declare that every such contract, deed, etc., "shall be void as to *all* purchasers for valuable consideration without notice *not parties thereto* and *lien* creditors, until and except from the time it is duly admitted to record in the county or corporation wherein the property embraced in such contract, deed, or bill of sale may be."[29] The revisors of 1919 also inserted the wise provision requiring indexing in addition to admission to record before such admission would operate as constructive notice.[30] This provision was omitted by the 1922 amendment, and the following was added at the end of the section as a substitute for it:

"The clerk of each court in which any such instrument is by law required to be recorded shall keep a daily index of all such instruments admitted to record in his office; and, immediately upon admission of any such instrument to record, the clerk shall index the same either in said daily index or the appropriate general index of his office. Within thirty days, except in cities of the first class and within ninety days in cities of the first class after admission of such instrument to record, the clerk shall index all such instruments indexed in said daily index in the appropriate general index. During the period above permitted for transfer from said daily index to said general index, indexing in said daily index shall be a sufficient compliance with the requirements of this act as to indexing."

In 7 Va. Law Reg. (N. S.) 295, the Clerk of the District Court of the United States for the Western District of Virginia very wisely called attention to the fact that the General Assembly of Virginia had not enacted legislation to authorize the filing with clerks of State courts of notices of Federal tax liens on real

28. Revisors' note to Code, Sec. 5194, citing McCandlish *v.* Keen, 13 Grat. 615 and Dulaney *v.* Willis, 95 Va. 606, 29 S. E. 324.

29. Acts 1922, S. B. 35, amending Sec. 5194 of the Code.

30. Revisors' note to Code, Sec. 5194.

estate under the provisions of Sec. 3186 of the Revised Statutes of the United States, as amended by an act approved March 4, 1913, and pointed out the urgent need therefor. By an emergency act approved March 20, 1922, effective from its passage, appropriate legislation was enacted.[31] Such notices may be filed with the clerk of the State court authorized to record deeds for the county or city wherein the land subject to the tax lien is situated. The notices must be recorded by the clerk in the deed books and properly indexed, but no fees may be collected by the clerk for filing and recording them.

The section of the Code relating to certificates of acknowledgment within the United States, or its dependencies, upon which writings may be admitted to record, which section also prescribes who may take the acknowledgments, was materially amended by an act approved March 28, 1922.[32] I shall mention several of these changes: The section as it now reads in the Code authorizes admission to record of a writing upon a certificate of acknowledgment of any officer out of the State who is authorized to take acknowledgments of deeds in the State or territory in which he acts. The amendment strikes out this provision. Another change requires that the certificate of a notary public without the State shall have his notarial seal affixed thereto, and that the certificate of a justice of the peace or a commissioner in chancery without the State shall have affixed thereto the certificate of the clerk of the court in which he qualified or by which he was appointed, under the seal of the court, to the effect that he is such officer as is described in such certificate. The certificate of a clerk of a court without the State must have affixed thereto the seal of his court. As to proof by two witnesses, the law now in force probably does not require that these witnesses shall be *subscribing witnesses*,[33] but there can be no doubt about this under the amendment for, while it enlarges this provision in other respects, it restricts the class of witnesses to *subscribing* witnesses.

Changing the law as it theretofore existed, the Code of 1919 contained, and still contains, a provision that proof of the hand-

31. Acts 1922, H. B. 152.

32. Acts 1922, H. B. 170, amending Sec. 5205 of the Code.

33. Turner *v.* Stip, 1 Wash. at p. 322.

writing in holographic wills must be made by at least two disinterested witnesses.[34] As this requirement had been overlooked in several cases, and as some such wills had been admitted to probate since January 13, 1920 on proof of handwriting by only one witness instead of two, the General Assembly by an emergency act approved March 20, 1922, validated the probate of such wills.[35]

Sec. 5281 of the Code on the subject of partition, was somewhat changed, and sections 5335 and 5340 of the Code on the subject of selling, leasing and encumbering the lands of infants and other persons under disabilities and lands held in trust, were very materially amended, by acts approved March 27, 1922[36] and March 2, 1922,[37] respectively, the latter act containing an emergency clause. While these changes are of importance, an exposition of them would require too much discussion in an address of reasonable length. The general object of the amendments to Sections 5335 and 5340 is to make the sections more elastic. They do not simplify the procedure.

Every personal representative of an intestate is now required, at the time of his qualification, to furnish the court or clerk granting the administration a list of the names, and as far as possible the ages and addresses, of the heirs of his decedent, accompanied by his affidavit that he has made diligent inquiry as to such names, ages and addresses, and that he believes such list to be true and correct, which list it is made the duty of the clerk to record in the *deed book* and to index it in the name of the decedent as grantor and the heirs as grantees.[38] An amendment of 1922 substitutes "will book" for "deed book" and also requires the list to show the degree of kinship of each heir to the decedent.[39]

Settlements of accounts of fiduciaries are now required to be recorded in will books; but under a proviso which was written into Sec. 5428 of the Code by an act approved March 28, 1922, the court *may* direct that such accounts shall be returned to it

34. Code, Sec. 5229.
35. Acts 1922, S. B. 406.
36. Acts 1922, H. B. 84.
37. Acts 1922, p. 186.
38. Code, Sec. 5379.
39. Acts 1922, H. B. 77.

upon uniform sheets of paper, in such dimensions as the court may prescribe, suitable and ready for binding, and in lieu of copying the reports of commissioners of accounts in blank books, the court may direct the clerk to file and preserve the original accounts, with the order of confirmation at the foot, in a temporary holder, and from time to time the court may also direct that the same be substantially bound under the supervision of the clerk into permanent books, each to be properly titled "fiduciary account book," serially numbered and properly indexed.[40]

When a report of the accounts of any personal representative and of the debts and demands against his decedent's estate shall have been filed in the office of a court, whether under the chapter of the Code on fiduciaries generally or in a suit in chancery, the Code enacts that the court, or the judge thereof in vacation, after one year from the qualification of *such* personal representative, may, on the motion of a legatee or distributee of his decedent, make an order for the creditors of such decedent to show cause against the payment and delivery of the estate of the decedent to his legatees or distributees, etc.[41] As the statute does not at present specifically deal with a case where the first personal representative has been succeeded by another or others, by an act approved March 7, 1922 the time after which the motion may be made is fixed at "after one year from the qualification of the personal representative that first qualifies.[42]

The Virginia statutes now in force give a landlord a lien for a year's rent as against all liens obtained after the goods of the tenant were carried on the leased premises.[43] In 1922 the statutes referred to were amended so as to reduce the period from one year to six months.[44] The enacting clause of the amendatory act is "Be it enacted by the General Assembly of Virginia, That sections 5523, 5524, and 5525 of the Code of Virginia be amended and re-enacted so as to read as follows." The sections are then published at length with the change mentioned above in each. But at the end of Sec. 5525 as re-enacted this proviso appears:

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40. Acts 1922, H. S. 307.

41. Code, Sec. 5439.

42. Acts 1922, p. 219, amending Sec. 5439 of the Code.

43. Burks' Pl. & Pr. (2nd ed.) pp. 736-37; Code, Secs. 5523, 5524, 5525.

44. Acts 1922, H. B. 42.

"Provided that nothing contained in this act shall apply to farm lands that are rented for agricultural purposes." It is presumed that the intention was to continue the one year period as to farm lands rented for agricultural purposes, but the actual effect of the proviso is to restore the common law as to the matters mentioned in the three sections unless violence be done to the ordinary and familiar rule of construction. This rule is that where sections of the Code or of any other act are amended and reenacted, the sections as amended must be read in the room and stead of the original sections.[45] Of course, the defect is serious, and should be cured by legislative act at the first opportunity. No change was made in the section of the Code allowing an attachment, where the specified grounds exist, for rent not due but which will become due and payable within *one year*.[46] The change as to the duration of the lien, however, affects *pro tanto* the rights of the attaching landlord as against other lien creditors.

Excepting from its application deeds of trust and mortgages executed by corporations, a section of the Code [47] enacts that no deed of trust or mortgage given to secure the payment of money, and no lien reserved to secure the payment of unpaid purchase money, may be enforced after twenty years from the time when the right to enforce the same shall have first accrued. But it is further enacted that the limitation prescribed may be extended by an endorsement to that effect, entered upon the margin of the page of the deed book on which the instrument is recorded, which endorsement must be duly executed by the *grantor* or his duly authorized attorney in fact, and attested by the clerk of the court in whose office such lien is recorded. Such endorsement is declared to operate to extend the limitation of the right to enforce the lien for twenty years from the date of the endorsement. Provision is then made for indexing the extension. By an act approved March 24, 1922,[48] the section was amended so as to make the limitation twenty years from the time *when the obligation last maturing secured by the lien shall have become due and payable, exclusive of one year from the death of any party in interest,*

45. Christian *v.* Taylor, 96 Va. 504, 31 S. E. 904.

46. Burks' Pl. & Pr. (2nd ed.) pp. 715-16; Code, Sec. 6416.

47. Code, Sec. 5827.

48. Acts 1922, S. B. 130.

instead of twenty years from the time when the right to enforce the lien shall have first accrued. The one year provision, however, probably adds nothing to the law, for it has been long provided by another section that "The period of one year from the death of any party shall be excluded from the computation of time within which by the operation of any statute or rule of law, it may be necessary to commence any proceeding to preserve or prevent the loss of any right or remedy." [49] The amendment also makes a change as to the endorsement to obtain the extension. Under the amendment the endorsement must be executed by the party in whom the *beneficial title* to the encumbered property is at the time of such endorsement, or it may be executed by his duly authorized agent as well as attorney in fact. It is supposed that the words "party in whom the beneficial title to the property so encumbered is at the time of such endorsement," as used in the statute, are intended to mean the party who at the time of the endorsement would be entitled to the legal title if the encumbrance was paid off or discharged by him. Lands are often sold subject to deeds of trust or mortgages, the purchasers assuming the payment of existing encumbrances, and in every such case it may be argued convincingly that the endorsement of the purchaser, or last purchaser, should be required to extend the limitation instead of the endorsement of the grantor in the deed of trust or mortgage who has parted with all the interest that he had in the land.

The remedy by motion after not less than fifteen days' notice, which is now allowed by Section 6046 of the Code as a substitute for every form of technical action at law, is supplanting the regular forms of action, slowly in some localities and rapidly in others. It gives me pleasure to recall that I have seen in the LAW REGISTER a carefully prepared paper which was read before the Legal Club of Lynchburg by a member, in which he points out the differences between Sec. 3211 of the Code of 1887, as amended, and Sec. 6046 of the Code of 1919.[50] In 1922 [50a] the section referred to was properly and wisely amended in several respects:

(1) When the notice is returned to the clerk's office within

49. Code, Sec. 5809.

50. 6 Va. Law Reg. (N. S.) 1.

50a. Acts 1922, H. B. 212.

five days after service, the present section provides that it shall be "forthwith docketed." The word "docketed" was hardly intended to be used fully in its technical sense, for unless the court happens to be in session, there is no place where the notice can be docketed. It is therefore simply filed. The amendment recognizes this fact and provides that, when so returned, the notice "shall be forthwith *filed* and the date noted thereon" by the clerk "and shall be docketed on the return day thereof." The "return day" is of course the day on which the judgment is to be asked, and this is always some day of a term of the court. The requirement that the date shall be noted on the notice adds nothing to the existing law, but makes statutory an important incident in the procedure, since the proceeding cannot be regarded as the commencement of an action so as to stop the running of the statute of limitations, for instance, or for other purposes, until the notice has been executed and returned to the clerk's office,[51] and it is of course highly desirable that there should be no question about the date of such return.

(2) The section now in force does not prescribe the time within which the notice must be made returnable, and in the recent case of *Virginia Hot Springs Co.* v. *Schreck,* 24 Va. App. 661, a remarkable state of facts was presented. As appears from the opinion of the court, "The notice was returned to the clerk's office November 3, 1919, and notified defendant that the judgment would be asked on the first day of the March term, 1920, (March 20, 1920) the day appointed therefor by law. The notice passed over the November term, 1919 (November 20), although there was ample time to mature the case for that term, and notified the defendant to appear 138 days after it was returned executed to the clerk's office." The court held that the notice was void; that while Sec. 6055 of the Code declaring that, unless otherwise provided, "process from any court, whether original, mesne, or final * * * shall be returnable within ninety days after its date," refers only to process from *any court,* yet the notice of motion must be made returnable within a reasonable time, and that as ninety days is fixed as the time within which process from a court must be made returnable, the same limitation should be applied to a notice of motion. The amend-

51. Burks Pl. & Pr. (2nd ed.) pp. 232-33

ment makes this decision statutory by enacting that "The return day of a notice under this section shall not be more than ninety days from its date," but with this qualification, since there are no proceedings at rules in motions, that if "the commencement of the next succeeding term of the court be more than ninety days from such date," then "the return day may be some day of such term."

(3) In the December, 1921 issue of the VIRGINIA LAW REGISTER the editor raised the question as to when pleas in abatement may be filed in a proceeding by way of motion,[52] and the amendment makes statutory the general opinion on this subject by enacting that "No plea in abatement under this section shall be received after the defendant has demurred, pleaded in bar or filed" his informal "statement of his grounds of defense."

(4) But the most material, and at the same time, the most desirable, change that was made in the section by the 1922 amendment relates to the procedure where the motion is upon an account. Under the act of 1916 which amended Sec. 3211 of the Code of 1887 for the last time prior to the taking effect of the Code of 1919, if the plea and affidavit mentioned in the section "were not filed by the defendant no formal motion in open court was necessary, but judgment was given for the plaintiff for the amount claimed in the affidavit filed with his notice, which judgment was entered by the clerk as of the day on which the notice was returnable, and became final upon the adjournment of the term, or the fifteenth day thereof, whichever happened first:" [53] These provisions were omitted from the Code section, and under it, "while no plea in bar or defense to the merits can be received on the part of the defendant unless accompanied by the proper affidavit, the section does not dispense with the formal motion in open court, nor provide that judgment shall be entered without present proof of the plaintiff's claim." [54] The amendment of 1922 enacts that "If such plea and affidavit be not filed by the defendant, the plaintiff shall, upon motion made in open court, be entitled to a judgment for the amount claimed in the affidavit filed with his notice, and no further proof

52. 7 Va. Law Reg. (N. S.) 614.
53. Burks Pl. & Pr. (2nd ed.) p. 321.
54. Id.

of the plaintiff's claim shall be necessary." *A priori,* it may seem desirable, in such case, to dispense with the motion in open court along with the present proof of the plaintiff's claim, but as counsel for the plaintiff must, or should, be in court anyway to see whether or not a defense will be made, it is no hardship to require him merely to make his motion. Observe, also, that the plaintiff is compensated for such inconvenience as there may be by receiving a judgment possessing more elements of finality than the judgment given him under the act of 1916 previously mentioned.

By an act approved March 24, 1922 vice-presidents and general managers were added to the list of officers and employees upon whom process against or notice to, domestic corporations may be served;[55] and by an act approved the day before, it was enacted that, in addition to the mode of service now prescribed, "a summons for a witness or for a juror may be served at his or her usual place of business or employment, during business hours, by delivering a copy thereof and giving information of its purport to the person found there in charge of such business or place of employment." [56]

A declaratory judgment act was passed in England as early as 1852.[57] In recent years acts of this nature have been passed in New Jersey,[58] New York,[59] Wisconsin,[60] Michigan [61] and Florida.[62] In its 1919 report the Committee on Legislation and Law Reform of the Virginia State Bar Association urged the enactment of such an act in Virginia.[63] By an act approved March 28, 1922,[64] jurisdiction is granted "to all courts of record to make binding declarations of rights and determine questions of construction, whether any consequential relief is or could be claimed, or not," and the act also prescribes "where, and how, and

55. Acts 1922, H. B. 246, amending Sec. 6063 of the Code.

56. Acts 1922, H. B. 312, amending Sec. 6062 of the Code.

57. 15 & 16 Vict., c. 86, Sec. 50.

58. Laws 1915, p. 185.

59. Practice Act, 1920, Sec. 473. (Laws, 144th Session, 1921, Vol. 4, p. 156).

60. Laws 1919, p. 253.

61. Laws 1919, p. 278.

62. Laws 1919, p. 148

63. Report Va. State Bar Association (1919) p. 75.

64. Acts 1922, S. B. 103.

with what effect suits seeking the exercise of such jurisdiction shall be brought and conducted."

"In cases of actual controversy," says the act, "courts of record within the scope of their respective jurisdictions shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed and no action or proceeding shall be open to objection on the ground that a judgment or order merely declaratory of right is prayed for. Controversies involving the interpretation of deeds, wills, other instruments of writing, statutes, municipal ordinances, and other governmental regulations, may be so determined, and this enumeration does not exclude other instances of actual antagonistic assertion and denial of right."

Lack of time will prevent the remaining portions of the act from being quoted or discussed. The act closes with the declaration that "it is to be liberally interpreted and administered with a view to making the courts more serviceable to the people."

Sec. 6130 of the Code prescribes with some particularity how a judgment or decree by confession in vacation may be entered by the clerk in his office; but this section is for the most part merely declaratory of the common law. Although the statute declares that "In any suit a defendant may in vacation of the court" confess judgment, it has been frequently held that such judgment is not invalid because there was no suit pending and no previous process.[65] By an act approved March 27, 1922, not amendatory in terms of any Code section, the confession of judgments in the offices of clerks is regulated in detail and the procedure is prescribed.[66] The act also gives certain forms. If the confession is to be by an attorney in fact the power of attorney must be acknowledged. By another act approved several days earlier (March 23, 1922) [67] it is declared that "No power of attorney, hereafter executed, authorizing and empowering any person or attorney to confess any judgment, at any place or at any time, shall be valid unless the attorney or other person authorized to confess judgment be named in the instrument, and unless the same be signed and acknowledged before some officer authorized

65. Burks Pl. & Pr. (2nd ed.) p. 282.
66. Acts 1922, H. B. 313.
67. Acts 1922, H. B. 214.

by the laws of this State to take acknowledgments to deeds. Any judgment confessed after this act becomes operative in pursuance of a power of attorney not in conformity with this act shall be void; provided, however, that nothing in this act shall be deemed to apply to notes and bonds that have been or may be discounted and held by any bank or trust company." The two acts, being *in pari materia,* must be read together. Any conflict between the two must be resolved in favor of the later act. The proviso in the act of March 23, therefore, is qualified by the act of March 27 which contains no such proviso.

A commendable act approved March 15, 1922 provides that "When the balance in any bank or trust company to the credit of a deceased person, upon whose estate there shall have been no qualification, shall not exceed three hundred dollars, and when there is due from any employer to a deceased employee upon whose estate there has been no qualification a sum not exceeding three hundred dollars, it shall be lawful for such bank or trust company or employer, after one hundred and twenty days from the death of said person, to pay said balance to his next of kin, whose receipt therefor shall be a full discharge and acquittance to such bank or trust company to all persons whomsoever on account of such deposit." [68] This act restores and enlarges an act of 1910 which was omitted in the late general revision.[69]

A special commissioner appointed to sell or rent property is prohibited by the Code from advertising the property for sale or renting, and from selling or renting the same, until he shall have given bond sufficient to cover at least the probable amount of the whole purchase money or rent, and shall have obtained from the clerk of the court a certificate that the bond has been given. This certificate or a copy thereof must be appended to the advertisement.[70] When such certificate shall have been published with an advertisement of the sale or renting, or when such bond shall have been given prior to a sale or renting not publicly advertised, the Code declares that any person purchasing or renting such property in pursuance of such advertisement, or in pursuance of the decree or order of sale or renting, shall be relieved of all lia-

68. Acts 1922, S. B. 158.

69. See revisors' note to Sec. 4125 of the Code.

70. Code, Sec. 6269.

bility for the purchase money or rent, or any part thereof, which he may pay to the special commissioner, as to whom the proper certificate shall have been appended to such advertisement, or who shall have given the bond aforesaid.[71] The uncertainty of the law with reference to the duty of a purchaser to see to the application of the purchase money in other cases,[72] caused the General Assembly to amend the section of the Code last referred to by adding thereto a new paragraph enacting that "No purchaser or renter at a *duly authorized* sale or renting *heretofore or hereafter* made by a receiver, personal representative, trustee, or other fiduciary shall be required to see to the application of the purchase money. But nothing in this paragraph contained shall be construed as enlarging the rights or decreasing the liability of such purchasers or renters any further than is expressly stated herein." [73] Of course, the new paragraph does not change or affect the existing law where the sale is made by a special commissioner. There is no need for any change in this respect, for if the sale or renting is duly authorized according to what the statute declares shall be conclusive evidence of this fact so far as the purchaser is concerned, he is already given sufficient protection.

A court of equity, in a suit wherein it is proper to decree or order the execution of any deed or writing, may appoint a commissioner to execute the same; and the execution thereof is as

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71. Code, Sec. 6270.

72. See monographic note on Trusts and Trustees, 2 Hen. & M. (Va. Rep. Ann.) at pp. 304-5 (bottom paging). In Redford *v.* Clarke, 100 Va. 115, 118, 40 S. E. 630, Judge Whittle, in delivering the opinion of the court, among other things, said:

"The case presents one phase of the important doctrine as to the liability of a purchaser from a trustee to see to the application of the purchase money.

"In England, the mischief, arising from the lengths to which that doctrine had been carried by the courts, was so great as to necessitate interference on the part of Parliament, and an abolition of the rule. 23 and 24 Vict. c. 145, sec. 29.

"The doctrine has never been received with favor in this country (Bish. Eq., section 279); and the disposition of the courts is to so limit its application as to avoid the evils which resulted from the rule of the English courts. See Freeman's note to Tyler *v.* Herring, 19 Am. St. Rep. 282-3-4."

73. Acts 1922, H. B. 403.

valid to pass, release or extinguish the right, title, and interest of the party on whose behalf it is executed, as if such party had been at the time capable in law of executing the same, and had executed it.[74] The section of the Code just cited corresponds to Sec. 3418 of the Code of 1887, and in 1918 the last named section was amended so as to enact that "Every deed executed by any such commissioner shall specifically set out as nearly as may be practicable the name or names of the person or persons on whose behalf the same is executed; provided, that when any such deed conveys the right, title or interest of the heirs of a person who is dead, it shall be sufficient for such deed to set out that the same is executed on behalf of the heirs of such decedent." [75] The present effect of this amendment is the same as if it were an amendment to Sec. 6296 of the present Code.[76] Some doubt being entertained as to the effect of non-compliance with the amendment of 1918, this was removed in 1922 by the addition of a sentence declaring that "failure to comply with the provisions of this paragraph shall not affect or invalidate any such deed; and all deeds heretofore executed by any such commissioner in which such persons or heirs are not specifically set out are hereby validated." [77] Of course, the validating clause is meaningless unless it should be held that non-compliance invalidated the deeds, which is hardly probable.

By an act approved March 27, 1922 material changes were made in Sec. 6317 of the Code on the subject of awarding and dissolving injunctions in certain cases.[78] By two other acts approved on the same day, Sec. 6322 was slightly amended,[79] and Sec. 6326 was repealed.[80] Both of these sections are also on the subject of injunctions.

In 1922 the mechanics' lien law was amended in one respect. The amendment is a simple one and provides that, for the purposes of the mechanics' lien chapter in the Code, "a well shall

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74. Code, Sec. 6296.
75. Acts 1918, p. 444.
76. Code, Sec. 6568.
77. Acts 1922, H. B. 396.
78. Acts 1922, H. B. 86.
79. Acts 1922, H. B. 83.
80. Acts 1922, H. B. 85.

be deemed a structure permanently annexed to the freehold." [81] The amendment was suggested by the case of the bored, drilled or driven well—not the ordinary dug well, but is not restricted to any particular kind of well.

A material change was made in the supply lien law by an amendment approved February 11, 1922.[82] The object of the change was to restore the law as it existed immediately before the late general revision with reference to persons who furnish *supplies* to mining or manufacturing companies. A statutory lien was given such persons by the Code of 1887, but was subsequently modified, and still later, entirely taken away. The Code of 1919 restored it,[83] and the amendment of 1922 takes it away again.

The Code of 1919 enacts that no suit shall be brought "to enforce the lien of a judgment against lands which had been conveyed by the judgment debtor to a grantee for value, unless the same be brought within ten years from the due recordation of the deed from such judgment debtor to such grantee," and the limitation is made to apply as well to judgments in favor of the Commonwealth as to other judgments.[84] This limitation was recommended by the revisors of 1919, and is a very desirable addition to the law. Already, however, the question has arisen as to whether the provision is retroactive in effect or merely prospective. Lawyers differ on this question. A settlement of it is therefore welcome. By an act approved March 23, 1922 [85] the provision is made to apply to liens of judgments "heretofore" as well as "hereafter rendered," and in order to prevent any question from being raised as to the constitutionality of the express retroactive language,[86] the taking effect of the amendment is postponed until January 1, 1923, thus giving a reasonable time within which all persons adversely affected may protect their rights. Of course, if the Code provision is already retroactive, the amendment does not change, but simply clarifies, the law.

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81. Acts 1922, H. B. 461, amending Sec. 6426 of the Code.
82. Acts 1922, p. 14, amending Sec. 6438 of the Code.
83. See revisors' note to Sec. 6438 of the Code.
84. Code, Sec. 6474.
85. Acts 1922, H. B. 432.
86. See Smith *v.* Northern Neck Ins. Co., 112 Va. 192, 70 S. E. 482.

In News Register Co. *v.* Rockingham Pub. Co., 118 Va. 140, 86 S. E. 874, it was held that:

"Corporations, unless authorized so to do, have no power to enter into a partnership, either with each other, or with individuals, as the stockholders are entitled, in the absence of notice to the contrary in the charter, to assume that their directors will conduct the corporate business without sharing that duty and responsibility with others. But such power may be conferred by charter, and when conferred the reason underlying the rule against its exercise no longer exists."

There was then no statutory provision authorizing corporations to form partnerships. This subject is dealt with by an act approved March 27, 1922,[87] in the following terms:

"All corporations, other than public service corporations, organized under the laws of this State shall have power to enter into partnership agreements with other corporations having similar powers and purposes, whether organized under the laws of this or other States, or with any individual or individuals; but no such agreement shall be entered into except the same be authorized in a stockholders' meeting by a resolution passed by *unanimous* vote of all the stockholders of each corporation affected, in the notice of which said meeting the object and purpose thereof has been duly stated."

By an act approved March 20, 1922, the penalty recoverable from a telegraph or telephone company for failure to transmit a dispatch or message faithfully and impartially, or for failure to transmit or deliver a dispatch or message as promptly as practicable, or in the order of its delivery to the company, was reduced from one hundred dollars to fifty dollars.[88] The State law, however, applies to intrastate messages only.[89]

In a felony case where the punishment may be death or confinement in the penitentiary for more than ten years, the jury must be kept together; in other cases, it must not be kept together unless the court otherwise direct. This has long been law in Virginia.[90] In 1922 the statute was amended so as to require

87. Acts 1922, H. B. 143, amending Sec. 3777 of the Code.
88. Acts 1922, S. B. 219, amending Sec. 4042 of the Code.
89. Code, Sec. 4044.
90. Code, Sec. 4902.

the jury to be kept together in capital cases only.[91] Several changes were also made in the amounts allowed for the board and lodging of jurors when so kept together.

Whether or not a prisoner in a felony case should be let to bail after conviction and sentence was, prior to the late general revision, a matter which rested in the discretion of the trial court; but in the revision the statute was amended so as to restrict it to misdemeanors.[92] In 1920, however, the former law was restored,[93] and in 1922, by another amendment, bail in misdemeanor cases, after conviction and sentence, was made a matter of right.[94] Strictly interpreted, this last amendment probably constitutes a legislative slip.

In recent years, especially since defendants in criminal cases have had appeals of right to the Supreme Court of Appeals, more than the usual number of cases have arisen in which prisoners sentenced to death have had to be brought back from the penitentiary to the courts which sentenced them, there to be re-sentenced after affirmance of their cases by the higher court. The presence of the prisoner at the time of re-sentencing, while necessary under the law now in force, serves no useful purpose, and the frequency of such cases caused the General Assembly in 1922 to enact that "Whenever, for an offense *hereafter committed,* the day fixed for the execution of a sentence of death shall have passed without the execution of such sentence, and it shall have become necessary to fix a new date therefor, it shall be the duty of the court which pronounced such sentence to fix another day for such execution. The person to be executed need not be present when such other day is fixed, but a copy of the order fixing the new date of execution shall be promptly furnished by the clerk of the court making the order to the officer in whose custody the person to be executed is, and said officer shall deliver a copy of said order to the person to be executed, and, if he is unable to read it, explain it to him, at least ten days before the date fixed for such execution, and make return thereof to the clerk of the

91. Acts 1922, S. B. 119.
92. Code, Sec. 4930, revisors' note.
93. Acts 1920, p. 241.
94. Acts 1922, H. B. 305.

court which issued same." [95] Of course, the act leaves unchanged the law with reference to respites by the Governor.

A trial justice bill was approved March 24, 1922.[96] It provides for the appointment, jurisdiction, etc., of trial justices in counties adjoining one or more cities having a population of thirty thousand or more in the aggregate, but it will not become effective in any county of that class having a population of less than fifty thousand unless and until the act is approved by the board of supervisors and the qualified voters. The act dispenses with the election, however, in counties adjoining a city or cities having a population of not less than 170,000. Amherst county is excluded absolutely.

As a general rule, neither an appeal to, nor a writ of error from, the Supreme Court of Appeals is a matter of right in Virginia, and prior to 1920 this rule applied both to criminal and civil cases; but in the year stated a radical departure was made as to the former by the passage of an act requiring the Supreme Court of Appeals to grant a writ of error in every criminal case (on application) as a matter of right.[97] The act referred to amended Sec. 6348 of the Code and repealed Sec. 6349, but the substance of the latter section was incorporated into the amended Sec. 6348. Sec. 4935 of the Code, which deals with writs of error in criminal cases, was left untouched, but in so far as that section gave the court or judges discretion in the granting of writs of error in such cases, it was repealed by the act of 1920 because inconsistent with it. The amendment of 1920 also provided that upon the presentation of a petition for an appeal or a writ of error in any case, counsel for the petitioner should be afforded, if he so desired, reasonable opportunity to state orally his reason or reasons why such appeal or writ of error should be granted. It may be stated incidentally that while the Commonwealth cannot obtain a writ of error in a criminal case unless the case is a prosecution for the violation of a law relating to the State revenue,[98] yet in every such revenue case the act of 1920

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95. Acts 1922, S. B. 105.
96. Acts 1922, H. B. 399.
97. Acts 1920, p. 416.
98. Const., Secs. 8, 88; Code, Secs. 4773, 4931.

allowed the Commonwealth to obtain a writ of error as a matter of right.[99]

But the radical departure of 1920 was short-lived. By an act approved February 17, 1922, which passed, the Assembly almost without opposition, the former law was restored.[1] This act,

99. It may also be stated that the first sentence of the 1920 amendment contained an error. That sentence read as follows: "The petition shall be rejected when it is from an interlocutory decree or order *or* if the court or judge to whom it is presented deems it proper that the case shall be proceeded in further in the court below before an appeal is allowed therein." The word "or," italicized in the sentence quoted, was inserted by the amendment and would have materially changed the meaning if effect had been given to it. At law a writ of error does not lie except to a final judgment or order, but in equity some important interlocutory decrees or orders are appealable. (Code, Sec. 6336; Smiley *v.* Provident Trust Co., 106 Va. 787, 56 S. E. 728. See also annotations to Sec. 6337 of the Code.) It is not believed that it was the intention to restrict appeals in chancery cases to appeals from final decrees or orders, but the language of the amended Sec. 6348 did this if the word "or," hereinbefore mentioned, had not been read out of the section. The ground for reading it out was that if it had been intended that it should be in the section, the words immediately following it would have been omitted as useless and as impairing the sense. The error was corrected by the 1922 amendment cited in the next succeeding foot note.

1. Acts 1922, p. 47, amending Sec. 6348 of the Code, as amended by Acts 1920, p. 416. Of the amendment of 1920, the Supreme Court of Appeals, in Watts *v.* Com., 129 Va. 781 (decided March 17, 1921) said:

"The statute (Acts 1920, p. 416) requires this court to allow writs of error in all criminal cases, without reference to their merits. The Virginia courts have for many years been rightfully commended because, while all the natural and constitutional rights of persons accused of crime have been respected, the administration and execution of the criminal laws have been prompt and efficient without any sacrifice of due and orderly procedure. This statute is manifestly retrogressive and harmful in its effects. It is injurious, not only to the public, but also to those litigants rightfully entitled to invoke the jurisdiction of this court for the correction of errors in the trial courts. The injustice to the public grows out of the consequential delay in the administration of justice, as well as the inevitable and unnecessary increase of those criminal expenses which are a charge on the public treasury. The wrong to the other litigants is that the time and attention of the judges of this court which could be better spent and is needed for the consideration and determination of their legal rights, must be consumed in hearing futile argument and, in writing opinions

however, retains the provision of 1920 requiring reasonable opportunity to be afforded counsel for the petitioner, if he desires it, when he presents his petition for a writ of error or an appeal, to state orally his reason or reasons why the appeal or writ of error should be granted. A writ of error or an appeal being regarded as a privilege and not as a vested right, it is safe to assume that the amendment of 1922 will be applied to cases arising before the amendment takes effect where the applications for the writs are made afterwards.[2]

At the present time a petition for a writ of error to, or an appeal from, a final judgment, decree or order must be presented to the Supreme Court of Appeals, or to some judge thereof, within one year from the time the final judgment, decree or order was rendered; but if the final decree from which an appeal is asked is a decree refusing a bill of review to a decree rendered more than six months prior thereto, the petition for an appeal from such decree so refusing a bill of review must be presented within six months from the date of such decree.[3] At the late session of the General Assembly the limitation of one year just mentioned was reduced to six months, and the limitation of six months was refused to three months.[4] The importance of these changes is apparent. It is believed that they will not apply to writs of error or appeals which have been sued out and perfected before the changes take effect, but will apply to cases arising before the changes go into effect where the application for the writ of error or appeal is made after the new law takes effect.[5] As to the *three* months' limitation attention should be called, in passing, to a conflict between the provisions of Sec. 6337, as amended, and Sec. 6355, as amended. The former retains the present six months' limitation, but as the latter containing the three months' limitation was approved almost a month later, the conflict must be resolved in favor of the three months' limitation.

(as required by the Constitution) in such cases as this, in which it is clear from the record presented that no right has been denied and that justice has already been done in the trial court. For those thus rightfully convicted it accomplishes nothing except delay, while it impedes, hinders, and delays all other litigation."

2. Burks Pl. & Pr. (2nd ed.) p. 762.

3. Code, Secs. 6337, 6355.

4. Acts 1922, pp. 45, 368, amending Secs. 6337 and 6355 of the Code.

5. Burks Pl. & Pr. (2nd ed.) p. 762.

Still another important change was made in appellate practice.[6] It relates to the time within which payment must be made for printing records. Before the late general revision, unless the costs of printing were paid within ninety days from the date of the notice by the clerk giving the amount of costs due, the case was required to be dismissed, but provision was made for re-instatement for good cause shown. The revision increased the period from ninety days to six months, but struck out the provision about re-instatement.[7] The amendment of 1922 restores the ninety-day limitation, but does not restore the re-instatement provision; hence, under the amendment, if the costs be not paid within ninety days and the case is dismissed for failure to pay the costs, the court will have no power to re-instate it. I am of the opinion that the amendment will apply to cases already in court when the act takes effect as well as those afterwards coming to the court. In other words, litigants now having cases in the court will have to pay for the printing of the records before the act takes effect, if more than ninety days will have elapsed before that date; or if not more than ninety days will have elapsed before that date, then within ninety days from the notice referred to in the statute.

It is a matter of local interest that, under an act approved March 23, 1922, cases in the Supreme Court of Appeals from the circuit courts of the counties of Amherst and Nelson will hereafter be heard at Richmond instead of at Staunton.[8]

Legislation relating to taxation is generally prolific at every session of the General Assembly. This legislation usually takes the form of amendments to the general revenue act of 1903, commonly known as the Tax Bill,[9] although Code sections are sometimes amended or repealed and independent acts passed. The last session was no exception to the general rule. I shall mention a part of this legislation.

Of great interest is the act reducing the total maximum rate of taxation, State and local, on intangibles, such as bonds and notes, from $1.10 on the one hundred dollars to fifty-five cents on the one hundred dollars, but providing that there shall be no

6. Acts 1922, p. 44, amending Sec. 3486 of the Code.
7. See revisors' notes to Secs. 3486 and 6356 of the Code.
8. Acts 1922, H. B. 401, amending Secs. 5867 and 5869 of the Code.
9. Printed as an appendix to the Code of 1919, but not indexed.

deductions from the amount thereof on account of any bonds, demands or claims owing to others as principal debtor or otherwise.[10] This act will apply to the assessment and collection of State taxes and local levies in the year 1922 and thereafter until otherwise provided by law. The act contains one provision of special interest to lawyers. It says that "In every action at law or suit in equity *in a court of record* for the collection of any such bonds, notes or other evidences of debt, taxable hereunder, the plaintiff shall be required to allege in his pleadings that such bonds, notes or other evidences of debt have been *reported for taxation and assessed* for each and every year *on the first day of February of which he was the owner of the same,* and no judgment or decree of the court shall be valid unless it recites that such *allegation* was made."

In 1916[11] an act was passed to prevent the maintenance of suits for the purpose of restraining the assessment or collection of taxes except in cases where the party has no adequate remedy at law. This act was omitted in the late general revision and thereby repealed. In 1922 it was restored.[12] The act was approved March 21, 1922 and went into effect immediately. It does not, however, affect any suit pending at that time. Of course, the purpose of the act is not to work any hardship on the tax-payer, but rather to prevent the revenue of the State from being tied up pending the adjudication of questions involved in litigation. Ordinarily the aggrieved tax-payer should proceed under the statutory provisions relating to redress against erroneous assessments.[13] Additional legislation on this subject was enacted at the 1922 session by an act approved March 27, 1922.[14] The title of this act is "An act to provide a simple remedy for the correction of erroneous assessments of taxes when such error is due to a mistake on the part of the assessing officer, or to the mistake of the officer on whose report the assessment was made."

By an amendment to Sec. 13 of the Tax Bill the taxes payable upon the admission to record of small deeds and long-term leases were somewhat reduced.[15] A special provision was also inserted

10. Acts 1922, S. B. 24, amending Secs. 8 and 9 of the Tax Bill.
11. Acts 1916, p. 89.
12. Acts 1922, H. B. 311.
13. Code, Sec. 2385 (amended 1920, p. 316), *et seq.*
14. Acts 1922, H. B. 422.
15. Acts 1922, H. B. 113.

as to deeds of trust, mortgages, etc., supplemental to other such instruments excepting from taxation such of them as come within the terms of the special provision.

House Bill 182 adds a new section to the Tax Bill (Sec. 44½) and imposes a tax upon the transfer at death of the personal property of non-residents.

I shall have but little more to say. So far I have confined myself to statutes of special interest to lawyers. Legislation enacted at any regular session of the General Assembly may be divided into three general classes:

(1) Statutes of interest to the general public, such as legislation on the subjects of education, public health, agriculture, labor, highways, motor vehicles, oysters, fish and game, cities and towns, and miscellaneous subjects;

(2) Statutes of special interest to lawyers; and,

(3) Statutes of special interest to officers, State and local, the majority of which have to do with their duties, salaries, fees, and other compensations.

In conclusion, I wish simply to mention the following statutes of interest to the public generally. All are of interest to lawyers as citizens; a few are of interest to them professionally.

Providing for submitting to the people at the general election in November the question of calling a constitutional convention;[16]

Providing for the appointment of a commission on simplification of State government;[17]

Authorizing the appointment by the Governor of a deputy budget officer to be known as the director of the budget;[18]

Creating the Hampton Roads Port Commission;[19]

Establishing a board of censorship for motion pictures;[20]

Providing for the erection of a $750,000 fireproof State office building;[21]

Prohibiting members of the governing boards of institutions, supported in whole or in part by State funds, from holding, dur-

16. Acts 1922, H. B. 366.
17. Acts 1922, S. B. 196.
18. Acts 1922, H. B. 158.
19. Acts 1922, H. B. 174.
20. Acts 1922, p. 434.
21. Acts 1922, p. 235.

ing their terms of office, any other office or position with the institutions on the boards of which they are serving;[22]

Allowing boards of supervisors of counties and councils of cities, subject to certain restrictions, to make appropriations for memorials to soldiers, sailors and marines who lost their lives in the World War;[23]

Amending at great length the prohibition act of 1918 so as to make the provisions thereof more stringent and also to put the primary responsibility for the enforcement of the law on the Attorney-General after September 1, 1922, when the separate department of prohibition will go out of existence;[24]

Making it a capital offense for any person, armed with a deadly weapon, to enter any banking house in the day-time or in the night-time with intent to commit larceny therein of money, bonds, notes, or other evidences of debt, but allowing the jury, in its discretion, instead of imposing the death penalty, to fix the punishment at confinement in the penitentiary not less than five nor more than eighteen years;[25]

Requiring every person driving any vehicle on a public highway, on approaching certain steam railway grade crossings, to stop before passing thereover, and to make it a misdemeanor if he does not, but the act does not apply to cities and incorporated towns and villages of one thousand inhabitants or more, and as to the places to which it does apply, the act provides that the failure of the traveler to observe the same shall not help the company in making its defense to any suit brought against it for damages to persons or property occasioned by its negligence;[26]

Authorizing the incorporation of co-operative marketing associations and regulating their conduct and business;[27]

Declaring it a misdemeanor for any person renting the lands of another to remove therefrom, without the consent of the landlord, any part of the crop raised on such lands until the rents and advances shall have been satisfied;[28]

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22. Acts 1922, H. B. 496.
23. Acts 1922, H. B. 18.
24. Acts 1922, H. B. 252.
25. Acts 1922, H. B. 151.
26. Acts 1922, H. B. 236.
27. Acts 1922, p. 50.
28. Acts 1922, H. B. 140.

Preventing the manufacture, sale or transportation within the Commonwealth of adulterated or misbranded insecticides and fungicides, and regulating the traffic therein and providing for the inspection of such materials;[29]

Preventing the sale of inferior and worthless vegetable seed after January 1, 1923;[30]

Preventing deception in the sale of paint, turpentine, linseed oil and any substitute therefor, often spoken of as the "pure paint bill;" [31]

Making it a misdemeanor for any person knowingly and wilfully to give false information concerning any person or corporation, to publishers, or employees of publishers, with intent that the same shall be published;[32]

Prohibiting the printing, stamping or impressing of words, figures, etc., or advertisements on newspapers after the same shall have been issued for circulation, without first obtaining the consent of the publisher so to do, and prohibiting the circulation, distribution or sale of a newspaper so printed, stamped or impressed;[33]

Carrying out the mandate of the Constitution with reference to the re-apportionment of senatorial and house districts;[34]

Declaring that, for the purpose of registering and voting, the residence of a married woman shall not be controlled by the residence or domicile of her husband;[35]

Amending at length the absent voters' law;[36]

Authorizing the council of any city having a population of fifty thousand inhabitants or more, to purchase and order the use of voting machines in any one or more of the voting precincts within such city, subject to the provisions of the act, the expense to be paid by the city;[37]

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29. Acts 1922, S. B. 215.
30. Acts 1922, H. B. 62.
31. Acts 1922, S. B. 159.
32. Acts 1922, H. B. 380.
33. Acts 1922, H. B. 379.
34. Acts 1922, p. 233; Id., approved March 15, 1922.
35. Acts 1922, S. B 134.
36. Acts 1922, H. B. 369.

Providing for the re-organization of the State Highway Department;[38]

Amending the State Highway System act of 1918 so as to make changes in some of the routes and further providing that a designated part of the system shall be known as the Lee Highway, in honor of the great commander of the Confederate forces;[39]

Naming Primary Road No. 1 of the State Highway System the Jefferson Davis Highway in honor of the only President of the Confederate States of America;[40]

Naming a part of Primary Road No. 9 of the said system the Jefferson Highway in honor of the father of Democracy in America;[41]

Authorizing contractors who are required by public officers, boards, commissions or agencies to file certified checks with bids, to file bonds in lieu thereof;[42]

Abolishing the local boards of review now existing in the several counties and cities of the State and enlarging the powers of examiners of records in consequence thereof;[43]

Making it a misdemeanor for the driver or operator of any motor or other vehicle, which has run into, over, or collided with, or in any way injured, any person or property upon the public highways, streets or alleys, to fail to stop such vehicle and return to the place of the accident and render such aid and assistance to the person or property so injured as may be necessary or possible in the circumstances, giving his name and address to the person or persons so injured;[44]

Amending the small loan act of 1918 in several important particulars;[45]

Amending several sections of the workmen's compensation law;

Providing for the incorporation and regulation of loan and savings institutions known as "Credit Unions" (little banks);[46]

38. Acts 1922, H. B. 281.
39. Approved March 20, 1922.
40. Acts 1922, H. B. 291.
41. Acts 1922, p. 229.
42. Acts 1922, p. 230.
43. Acts 1922, H. B. 332.
44. Acts 1922, H. B. 240.
45. Approved March 20, 1922.
46. Acts 1922, H. B. 407.

Authorizing the passage of zoning ordinances by city councils but saving vested rights, of course;[47]

Amending in several respects the laws regulating hotels;[48]

Declaring the third day of June (Jefferson Davis day) and the eleventh day of November (Armistice day) in each year legal holidays;[49] and

Making it a misdemeanor for any person wilfully to wear or use, to obtain assistance, the emblem of the American Legion, unless he is entitled to use or wear the same.[50]

Many bills coming within the classification of welfare legislation were enacted by the Assembly. Of these the following will be mentioned:

Changing the name of the State Board of Charities and Corrections to State Board of Public Welfare, enlarging the powers and increasing the duties of the board and authorizing the creation of a Children's Bureau within the department and the formation of local boards of public welfare throughout the State;[51]

To increase the usefulness of juvenile and domestic relations courts in cities of 25,000 inhabitants or more and to make provision for such courts in cities of less than 25,000 inhabitants and in counties;[52]

Amending at length the existing laws concerning the treatment and handling of delinquent, dependent and neglected children;[53]

Regulating maternity hospitals, children's boarding houses and nurseries, child placing and child-placing agencies;[54]

Throwing safeguards around the adoption of minor children by adults;[55]

Amending the desertion and non-support act;[56]

Accepting the provisions of the Federal maternity aid act, known as the Sheppard-Towner bill;[57]

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47. Acts 1922, p. 46.
48. Acts 1922, p. 24.
49. Acts 1922, p. 26.
50. Acts 1922, p. 21.
51. Acts 1922, p. 156.
52. Acts 1922, S. Bs. 128, 165.
53. Acts 1922, S. B. 126.
54. Acts 1922, p. 152 and S. Bs. 80, 93.
55. Acts 1922, S. B. 79, amending Sec. 5333 of the Code.
56. Acts 1922, S. B. 9
57. Acts 1922, p. 155.

Substituting a new and more workable act in the place of the existing law relating to public aid to children in their own homes, often referred to as the "mothers' pension act;" [58]

Enacting a new and improved child labor law;[59]

Making it a misdemeanor to furnish or sell to any minor under *eighteen* years of age a pistol, dirk or bowie-knife, thus raising the age from sixteen years, as at present, to eighteen;[60]

Making it a misdemeanor for any person employing or having the custody of any child wilfully or negligently to cause or permit the life of such child to be endangered or the health of such child to be injured, or wilfully or negligently to cause or permit such child to be placed in a situation that its life or health or morals may be endangered, or to cause or permit such child to be overworked, tortured, tormented, mutilated, or cruelly beaten or cruelly treated;[61]

Authorizing any county or city, on the petition of twenty voters in an election district, to establish in that district one or more recreation centers;[62]

Permitting occupations, known by the name of "occupational therapy," to be given in hospitals and other institutions wholly or partially supported by the State which care for children either physically or mentally disabled.[63]

The foregoing welfare bills were submitted as the result of the work of the Children's Code Commission. Some of them, however, were materially amended before passage.

The Assembly also passed acts

Creating the Virginia Commission for the Blind;[64]

To effect the separation of the schools for the deaf and the blind at Staunton, and to provide for a commission to make recommendations concerning the establishment of a separate school for the education of the white blind children of Virginia;[65]

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58. Acts 1922, S. B. 84.
59. Acts 1922, S. B. 81.
60. Acts 1922, S. B. 88.
61. Acts 1922, S. B. 83.
62. Acts 1922, p. 231.
63. Acts 1922, p. 44.
64. Acts 1922, H. B. 117.
65. Acts 1922, H. B. 118.

Creating a commission on mental health;[66]

Providing a new compulsory school attendance law;[67]

Accepting the benefits of an act of Congress for the promotion of vocational rehabilitation of persons disabled in industry or otherwise;[68]

To effect a re-organization of school administration in the counties after September 1, 1922 by abolishing district school boards and county school boards as they now exist and creating new county school boards in their stead to serve as the unit of operation of the school system in the counties, each of such boards to be composed of only one trustee from each magisterial district in the county, thus decreasing the number of school trustees in counties sixty-six and two-thirds per cent.[69]

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66. Acts 1922, S. B. 69.
67. Acts 1922, H. B. 8.
68. Acts 1922, S. B. 391.
69. Acts 1922, S. B. 172.